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Gregory L. Trauth

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NEIFELD IP LAW, PC
4813-B EISENHOWER AVENUE
ALEXANDRIA, VA 22304

EXAMINER

MEINECKE DIAZ, SUSANNA M

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/998,941
Filing Date: November 15, 2001
Appellant(s): TRAUTH ET AL.

MAILED

MAY 09th 2007

GROUP 3600

Richard A. Neifeld (Reg. No. 35,299)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 2, 2006 appealing from the Office action mailed November 2, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

Claims 1-4, 7, 17, 18, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Bayer et al. (US 2002/0103693).

Claims 5, 6, 8-16, 19-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bayer et al. (US 2002/0103693), as applied to claims 3 and 17 above.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 7, 17, 18, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Bayer et al. (US 2002/0103693).

Claims 5, 6, 8-16, 19-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bayer et al. (US 2002/0103693), as applied to claims 3 and 17 above.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 7, 17, 18, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Bayer et al. (US 2002/0103693).

Bayer discloses an electronic network implemented method for notifying personnel of customer feedback messages, comprising:

[Claim 1] receiving from a customer a customer feedback message in an electronic format (¶ 78 – Customers may submit feedback using Web-based forms, Interactive Voice Response units, etc.);

Art Unit: 3694

automatically storing said feedback message from said customer in a database in response to receipt of said customer feedback message in said electronic format (Fig. 2, #600; ¶¶ 57-62 – Feedback is stored in a feedback database); and

automatically creating and transmitting an electronic notification message to a first employee of an employer, said electronic notification message providing an indication that a feedback message exists, said automatically creating and transmitting occurring in response to at least one of said receiving and said automatically storing (¶¶ 69-73 – Feedback is analyzed and forwarded to an appropriate service provider representative (which is an example of a first employee of an employer), in light of the nature, severity, and/or frequency of the given type of feedback. ¶ 76 discloses that reports of aggregated feedback may be forwarded to a representative of the service provider, e.g., to a travel manager, which is another example of a first employee of an employer);

[Claim 2] wherein said transmitting comprises transmitting said electronic notification message via e-mail (¶ 73 – Feedback may be forwarded to the service provider via an electronic mail message);

[Claim 3] wherein said receiving includes receiving a customer satisfaction rating (¶ 71 – The severity, frequency, and/or nature of a customer's comment or complaint is assessed. This type of feedback is indicative of a customer satisfaction rating);

[Claim 4] wherein said electronic notification message includes said customer satisfaction rating (¶ 73 – The service provider is notified regarding “a particular

Art Unit: 3694

complaint, comment, or group of complaints or comments," which are reflective of a customer satisfaction rating);

[Claim 7] wherein said customer feedback message in said electronic format comprises an audio file including a spoken message provided by said customer (§ 78 – A customer may submit feedback that is recorded using a telephone Interactive Voice Response Unit).

[Claims 17-18] Claims 17-18 recite limitations already addressed by the rejection of claims 1-4 and 7 above; therefore, the same rejection applies.

[Claim 33] Claim 33 recites limitations already addressed by the rejection of claims 1-4 and 7 above; therefore, the same rejection applies.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 8-16, 19-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bayer et al. (US 2002/0103693), as applied to claims 3 and 17 above.

[Claims 5, 6] As per claims 5 and 6, §§ 69-73 of Bayer teach that feedback is analyzed and forwarded to an appropriate service provider representative (which is an example of

an employee of an employer), in light of the nature, severity, and/or frequency of the given type of feedback. ¶ 76 also discloses that reports of aggregated feedback may be forwarded to a representative of the service provider, e.g., to a travel manager, which is another example of an employee of an employer.

Regarding claim 5, Bayer addresses the following limitations:

[Claims 5, 6] determining whether said customer satisfaction rating is below [Claim 5] or above [Claim 6] a threshold value (¶¶ 71, 75 – A certain customer feedback severity or frequency of complaints can trigger a feedback notification to the service provider. In other words, the service provider only receives an immediate notification if customer satisfaction is determined to be outside of an established threshold. The assessment is made in relation to the threshold; therefore, depending on from which vantage point the threshold is assessed, being within an established threshold may be viewed as being above or below the threshold value. Similarly, being outside of the established threshold may be viewed as being below or above the threshold value, respectively); and

transmitting a second electronic notification message to a second employee of said employer if said customer satisfaction rating is below [Claim 5] or above [Claim 6] said threshold value, said second electronic notification message providing an indication that a feedback message exists (¶¶ 71, 75 – A certain customer feedback severity or frequency of complaints can trigger a feedback notification to the service provider. In other words, the service provider only receives an immediate notification if customer satisfaction is determined to be outside of an established threshold. The assessment is

Art Unit: 3694

made in relation to the threshold; therefore, depending on from which vantage point the threshold is assessed, being within an established threshold may be viewed as being above or below the threshold value. Similarly, being outside of the established threshold may be viewed as being below or above the threshold value, respectively).

What Bayer fails to expressly teach is that the second notification message (in both claims 5 and 6) is transmitted to a second employee. However, ¶ 76 of Bayer discloses that reports of aggregated feedback may be forwarded to a representative of the service provider, e.g., to a travel manager, which may be interpreted as the first employee. Furthermore, ¶¶ 69-73 of Bayer teach that feedback is analyzed and forwarded to an appropriate service provider representative (which may also be interpreted as an employee of an employer), in light of the nature, severity, and/or frequency of the given type of feedback. What is missing from Bayer is an express teaching that these two employees are different employees working for the same employer, yet Bayer describes the recipient of the aggregated feedback reports as potentially being a travel manager while an "agent" of a service provider (e.g., a travel agency) may receive notification that direct contact with a customer is required (¶ 71). Clearly, different skills or company interests are required to deal with each type of notification. For example, the Examiner submits that it is old and well-known in the art of service operations for a manager of a company to review aggregated feedback reports while lower-level customer service agents commonly attend to the direct customer service needs (e.g., addressing complaints) of the company's customers. This arrangement allows each employee to focus on his/her principle role(s) within the

Art Unit: 3694

organization. Similarly, Bayer forwards various types of notifications to representatives of a travel service; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to ensure that Bayer's aggregated feedback reports are sent to managers while the notifications requesting direct customer service contact with customers are sent to separate customer service agents (within the same company) in order to allow each employee to focus on his/her respective role(s) within the organization.

Bayer discloses an electronic network implemented method for notifying personnel of customer feedback messages, comprising:

[Claim 8] receiving a spoken customer feedback message from a customer (¶ 78 – A customer may submit feedback that is recorded using a telephone Interactive Voice Response Unit);

creating an audio file containing a recording of said spoken customer feedback message (¶ 78 – A customer may submit feedback that is recorded using a telephone Interactive Voice Response Unit);

storing said audio file in a database (Fig. 2, #600; ¶¶ 57-62 – Feedback is stored in a feedback database; ¶ 78 – A customer may submit feedback that is recorded using a telephone Interactive Voice Response Unit).

generating an electronic notification message, said electronic notification message indicating that a certain feedback message has been received (¶¶ 69-73 –

Art Unit: 3694

Feedback is analyzed and forwarded to an appropriate service provider representative, in light of the nature, severity, and/or frequency of the given type of feedback);

transmitting said electronic notification message to an employee of an employer (¶¶ 69-73 – Feedback is analyzed and forwarded to an appropriate service provider representative, in light of the nature, severity, and/or frequency of the given type of feedback);

[Claim 9] wherein said transmitting comprises transmitting said electronic notification message via e-mail (¶ 73 – Feedback may be forwarded to the service provider via an electronic mail message);

[Claim 10] assigning a response ID to said customer feedback message (¶ 57 – Feedback is stored with a feedback identifier).

Regarding claims 8 and 32, Fig. 2, #600; ¶¶ 57-62 of Bayer disclose that feedback is stored in a feedback database. A customer may submit feedback that is recorded using a telephone Interactive Voice Response Unit (¶ 78). As per ¶¶ 69-73, feedback is analyzed and forwarded to an appropriate service provider representative, in light of the nature, severity, and/or frequency of the given type of feedback. Bayer does not expressly disclose in which format a service provider may access this information beyond stating, "Custom comments or complaints may be input via a telephone keypad or by recording a voice message which can be translated using voice recognition software." (¶ 78) In other words, Bayer does not expressly teach the step of accessing said database and playing said audio file containing a recording of said

Art Unit: 3694

spoken feedback message stored in said database to said employee, upon receiving a command from said employee. However, Official Notice is taken that it is old and well-known in the art to transmit and access audio messages directly through an audio file (e.g., transmitted via e-mail or accessed from a database). This allows a person to easily access a message in its original audio format (e.g. as opposed to having to read a transcript of the message, thereby losing the effects of voice intonations, etc.). Since Bayer's invention helps to facilitate an assessment of customer feedback to identify any problems that need to be addressed by a service provider and Bayer already discloses the collection of feedback in an audio format, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Bayer to incorporate the step of accessing said database and playing said audio file containing a recording of said spoken feedback message stored in said database to said employee, upon receiving a command from said employee (e.g., transmitted via e-mail or accessed from a database) in order to allow a service provider to easily access a message in its original audio format, thereby facilitating analysis of a customer's emotional state based on voice intonations, etc.

As per claim 11, Bayer teaches the step of assigning a response ID to said customer feedback message (§ 57 – Feedback is stored with a feedback identifier); however, Bayer does not expressly teach that the command from said employee comprises said response ID. Official Notice is taken that it is old and well-known in the art of searching database records to access a specific record using an assigned record ID. This facilitates quicker retrieval of the desired record. Therefore, the Examiner

submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to allow Bayer's employee to access an audio feedback file using the feedback identifier, or response ID, in order to facilitate quicker retrieval of the desired record.

Claims 12-14 recite limitations already addressed by the rejection of claims 5 and 6 above; therefore, the same rejection applies. Furthermore, Bayer teaches that the second notification message (e.g., the notifications requesting direct customer service contact with customers) may be sent via e-mail (§ 73).

[Claims 15-16] Claims 15-16 recite limitations already addressed by the rejection of claims 1-14 and 32 above; therefore, the same rejection applies.

[Claim 19] Claim 19 recites limitations already addressed by the rejection of claims 1-14 and 32 above; therefore, the same rejection applies.

[Claims 20-21] Claims 20-21 recite limitations already addressed by the rejection of claims 1-14 and 32 above; therefore, the same rejection applies.

[Claims 22-27] Claims 22-27 recite limitations already addressed by the rejection of claims 1-14 and 32 above; therefore, the same rejection applies.

Furthermore, regarding claims 22 and 27, Bayer does not expressly teach that an employee may use a web server to retrieve and view the customer feedback message on a browser, including a link of the web page to enable playback of an audio file. However, Bayer does state that "feedback received from travelers may be 'posted' on a

Art Unit: 3694

Web-site for viewing and further comment by other travelers" (§ 79). In other words, Bayer's invention clearly lays forth the groundwork, including the apparatus and functionality, for permitting an employee (as opposed to a customer) to view the feedback on a web browser; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Bayer to allow a service provider's employees to use a web server to retrieve and view the customer feedback message on a browser in order to facilitate global access to the feedback, which is a well-known advantage that arises from posting data on the Internet. Furthermore, Official Notice is taken that it is old and well-known in the art of information distribution to make audio files available on the Internet using a link to a web page. This also facilitates global access to audio files. Therefore, the Examiner further submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to allow a service provider's employees to use a web server to retrieve and view the customer feedback message on a browser, including a link of the web page to enable playback of an audio file, in order to facilitate global access to audio feedback.

[Claims 28-31] Claims 28-31 recite limitations already addressed by the rejection of claims 1-14, 22-27, and 32 above; therefore, the same rejection applies.

(10) Response to Argument

Appellant argues that "Bayer does not teach either automatically or promptly creating and transmitting a message to an employee in response to either receiving or

Art Unit: 3694

storing customer feedback." (Pages 6 and 17-18 of the Appeal Brief) First, it should be noted that "promptly" (or any synonym thereof) is only recited in claims 20-21. This word is relative in nature and generally means that something is done quickly or expeditiously. The fact that Bayer utilizes an electronic system including a customer controller to more proactively address customer complaints (as seen in ¶ 27) implies that Bayer's system operates automatically and promptly (e.g., more expeditiously than prior art customer feedback systems in the related art). As a matter of fact, Bayer states, "A random access memory (RAM) 235 is connected to communication bus 210 to provide microprocessor 205 with fast data storage and retrieval" (¶ 39), thereby further supporting Examiner's assertion that Bayer is concerned with processing information more rapidly. Second, the word "automatically" has various interpretations, one of which involves the use of a machine to perform an action. On page 8 of the Appeal Brief, Appellant submits that, since Bayer's feedback evaluation process is a two-step process that involves review of feedback to determine the severity of a complaint and then actual forwarding of the complaint to the proper personnel when the complaint is sufficiently severe, "Bayer does not teach **automatically** creating and transmitting a message to an employee in response to either receiving or storing customer feedback, as defined in claim 1." The Examiner respectfully disagrees. The word "automatically" does not preclude a two-step process or manual intervention of any sort. As per Appellant's own specification and claims 5, 6, 12, 13, 15, 16, and 26, a determination is made regarding to whom to send an electronic notification message based on whether a customer satisfaction rating is below or above a threshold value.

Art Unit: 3694

Similarly, Bayer analyzes the severity of a complaint and routes any electronic notification message(s) regarding the complaint accordingly. In this sense, Appellant's own specification is a two-step process of evaluating the severity of the customer satisfaction rating to determine the appropriate routing protocol and then routing a notification related to the customer satisfaction rating accordingly. Furthermore, Bayer's notification may be routed via various electronic means, including via electronic mail message (§ 73) as well as Web-based forms and voice recognition software (§§ 70, 78, 79). Clearly, Bayer utilizes machines to electronically (i.e., automatically) create and transmit a message to an employee in response to either receiving or storing customer feedback.

Additionally, it should be noted that Appellant's specification discusses an embodiment in which customers submit comments in the form of audio files. In this embodiment, voice-to-text software is used to translate the audio files and route any complaints accordingly (Pages 11-12 of the specification). This exemplifies how extra steps may be added into the overall process so that the process is now a two- or three-step process, as per Appellant's own admission. As seen in the rejection of claim 7, for example, Bayer addresses such an embodiment.

Appellant argues that "Bayer does not disclose receiving from a customer a customer feedback message including a customer satisfaction rating, as defined in claim 3." (Page 11 of the Appeal Brief) However, according to Appellant's own specification, a customer satisfaction rating may be presented in the quantitative form of a "number scale (i.e., 1, 2, 3)" or in the more qualitative form of a "word scale (i.e.,

Art Unit: 3694

great, satisfactory, poor)." (Page 8, lines 14-16 of the specification) "This satisfaction rating is then compared to a threshold value 304." (Page 8, lines 17-18 of the specification) As stated in the art rejection, Bayer discloses that the severity, frequency, and/or nature of a customer's comment or complaint is assessed. This type of feedback is indicative of a customer satisfaction rating (§ 71). For example, the severity of a complaint is determined (§§ 70-71) and the complaint is forwarded to be handled by the appropriate service provider employee when the complaint is deemed severe enough for follow-up (§§ 71, 73). The assessment of whether the complaint is severe enough for follow-up is indicative of a threshold being crossed. If the complaint is not severe enough to warrant further action from the service provider, then the threshold is not crossed. It is understood that Bayer's customer service controller or an agent thereof is gleaned qualitative customer satisfaction rating information from the complaints and evaluating them in light of an acceptable (and non-acceptable) level of customer service, or threshold of customer service. Bayer may evaluate customer satisfaction ratings on an individual complaint basis (and not just in relation to a group and frequency of complaints), which further indicates that the customer satisfaction ratings themselves can trigger routing of the complaint to appropriate personnel for follow-up with the customer. It should also be noted that the assessment of a threshold value (as recited in claims 5 and 6, for example) need not require that the value be a specific quantitative number. As evidenced by Appellant's own specification, a value may reflect a more qualitative assessment (e.g., on the level of excellent, good, bad), which is taught by Bayer.

Regarding claims 17-18, "the applicant submits that the reasons presented in response to the rejection of claim 1 above, apply to the rejection of claim 17." (Page 12 of the Appeal Brief) Consequently, the Examiner's response to the arguments related to claim 1 applies to the rejection of claims 17-18 as well.

Regarding claim 33, "the applicant submits that for the reasons presented in the response to the rejection of claim 1 above, the rejection of independent claim 33 is improper and should be reversed." (Page 13 of the Appeal Brief) Consequently, the Examiner's response to the arguments related to claim 3 applies to the rejection of claim 33 as well.

Regarding claims 5, 6, and 12-14, Appellant argues that, since Bayer does not address the customer satisfaction ratings, Bayer does not address the limitations of these claims (pages 13-14 of the Appeal Brief). However, as discussed above, the Examiner submits that Bayer does disclose the customer satisfaction ratings; therefore, Appellant's arguments are not persuasive for the reasons presented above.

Regarding claims 15-16, Appellant presents the same basis of arguments that was presented in relation to the claims argued above (as seen on pages 14-17 of the Appeal Brief). The Examiner's response to arguments for the claims argued above applies to claims 15-16 as well. Further regarding claim 15, Appellant broad asserts that "Bayer does not teach or suggest 'attaching said audio file to said notification message,' as recited in claim 15." (Page 15 of the Appeal Brief) The Examiner respectfully disagrees. ¶ 78 of Bayer specifically addresses the audio file details, as explained in the art rejection.

Further regarding claims 22-27, Appellant argues, "The examiner's stated motivation for modifying the disclosure in Bayer is 'to facilitate global access to audio feedback.' This motivation is too broad and general to modify the teachings of Bayer." (Page 20 of the Appeal Brief) As explained in the art rejection, Bayer all but teaches that an employee may use a web server to retrieve and view the customer feedback message on a browser, including a link of the web page to enable playback of an audio file. Since Bayer does state that "feedback received from travelers may be 'posted' on a Web-site for viewing and further comment by other travelers" (§ 79), the Examiner submits that Bayer's invention clearly lays forth the groundwork, including the apparatus and functionality, for permitting an employee (as opposed to a customer) to view the feedback on a web browser; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Appellant's invention to adapt Bayer to allow a service provider's employees to use a web server to retrieve and view the customer feedback message on a browser in order to facilitate global access to the feedback, which is a well-known advantage that arises from posting data on the Internet. The only explicit difference between Bayer and the claim limitation in question is who can view the feedback via a Web-site. Bayer has all of the technology to display the feedback on a Web-site as seen by the fact that Bayer displays such information to a customer via a Web-site; Bayer merely fails to explicitly state that the employee views the customer feedback in this manner. Therefore, the Examiner submits that the motivation of facilitating global access to the feedback is not overly broad and general at all, especially in light of the fact that Bayer discloses the required apparatus to display

Art Unit: 3694

feedback information via a Web browser and the fact that employees do view the customer feedback in order to be notified of the feedback.

Appellant broadly "submits that the examiner's reasoning for taking of office notice is flawed." (Page 22 of the Appeal Brief) Examiner notes the following discussion of Official Notice taken from the MPEP:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate. (MPEP § 2144.03(C))

Art Unit: 3694

Appellant has not "specifically point[ed] out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art." Appellant's broad request for references to support the Examiner's statement of Official Notice amounts to nothing more than an unsupported challenge. Nevertheless, in support of the Examiner's Official Notice statement that "it is old and well-known in the art of information distribution to make audio files available on the Internet using a link to a web page," the Examiner cites real-world examples. For years (including prior to Applicant's earliest priority date of March 23, 2001), Internet radio via a Web link has existed, music files have been downloaded via Web sites, and streaming audio/video files have been available, as seen in the following patents: US 6005563, US 5987509, US 5903727, US 5889860, US 5867494, US 5774666, US 5726909, EP 844572, JP 10187408, WO 200116666, US 6182045, and US 6247130.

Additionally, Appellant argues that "the examiner's conclusion does not address the feasibility of making audio files available on the Internet using a link to a web page with respect to associated technological issues, such as the quality of the playback of the audio file on the web page and whether the systems have the capacity to timely transmit and/or receive the audio information." (Page 22 of the Appeal Brief) First, these details are not recited in the claims. Second, Bayer discloses both audio recording technology and Web-based information review/gathering technology; therefore, the Examiner maintains that one of ordinary skill in the art at the time of Appellant's invention would have known how to modify Bayer's existing audio recording

technology and Web-based interface to merge the two technologies into a single system. This is evident based on how widespread audio file downloading capabilities have become since the 1990's (several years prior to Appellant's priority date of March 23, 2001).

Regarding claim 28, Appellant reiterates previously presented arguments, which the Examiner has already addressed above.

In conclusion, Appellant's arguments are not persuasive.

(11) Related Proceeding(s) Appendix

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,




Susanna M. Diaz
Primary Examiner
Art Unit 3694

Conferees:



James Trammell
Supervisory Patent Examiner
Art Unit 3694



Robert Weinhardt
Business Practice Specialist
Technology Center 3600